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Message Text

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ORIGIN EB-08

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FM SECSTATE WASHDC
TO USMISSION OECD PARIS PRIORITY
AMEMBASSY BONN PRIORITY

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E.O. 11652: N/A

TAGS: EINV, OECD

SUBJECT: OECD INVESTMENT COMMITTEE

REF: (A) OECD PARIS 33687; (B) IME/M(76)6; (C) IME(77)2

1. FOLLOWING ARE U.S. COMMENTS ON SECRETARIAT NOTE IME(77)2 REGARDING TASKS AND FUNCTIONS OF THE CIME, WHICH MISSION MAY WISH TO DRAW ON AS APPROPRIATE.

2. IN OUR VIEW THE SECRETARIAT NOTE IS NOT CONSISTENT WITH UNDERSTANDINGS REGARDING FUTURE ROLE OF COMMITTEE REFLECTED IN REFS (A) AND (B). SPECIFICALLY, WE BELIEVE
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PARAGRAPH 2 IS A MISINTERPRETATION OF THE TASKS GIVEN TO THE COMMITTEE BY THE COUNCIL. THE REFERENCE TO WORK IN THE FIELD OF INTERNATIONAL INVESTMENT WHICH "MAY LEAD TO" OR "COULD RESULT IN" THE CONCLUSION OF FURTHER AND COMPLEMENTARY AGREEMENTS AND ARRANGEMENTS WAS NOT, IN OUR VIEW, INTENDED TO CONSTITUTE A MANDATE FOR A MAJOR TASK OF THE CIME.

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3. IN GENERAL WE THINK THAT THE IMMEDIATE FUTURE WORK OF THE CIME SHOULD FOCUS ON (1) COORDINATION WITH OTHER SPECIALIZED COMMITTEES OF THE OECD AND (2) A SHARING OF VIEWS BY MEMBERS ON INVESTMENT ISSUES UNDER DISCUSSION IN

OTHER FORUMS AND (3) GENERAL EXPERIENCE OF MEMBER GOVERNMENTS UNDER THE OECD DECLARATION, DECISIONS, AND GUIDELINES FOR MNES.

4. THE DOCUMENT DOES OUTLINE A NUMBER OF AREAS WHERE CIME DISCUSSION MIGHT BE USEFUL. FOR EXAMPLE, DISCUSSION OF NATIONAL TREATMENT, DISPUTE SETTLEMENT MECHANISMS AND BRIBERY WOULD BE HELPFUL. WE ARE NOT SURE THAT THE PARTICULAR ISSUE OF THE APPLICATION OF NATIONAL TREATMENT TO NON-MEMBER COUNTRIES CREATES SPECIAL PROBLEMS OF INTERPRETATION AS INDICATED IN THE SECRETARIAT DRAFT, BUT THE U.S. IS QUITE PREPARED TO DISCUSS THIS AND OTHER ISSUES RELATED TO NATIONAL TREATMENT. WE DO BELIEVE HOWEVER THAT THIS SUBJECT IS OF SUFFICIENT IMPORTANCE TO MERIT CONSIDERATION BY THE FULL MEMBERSHIP OF THE CIME RATHER THAN BY A WORKING GROUP.

5. ON THE MATTER OF DISPUTE SETTLEMENTS THE CIME COULD USEFULLY ENDEAVOR TO EXAMINE WAYS IN WHICH MEMBER COUNTRIES WHICH ARE SIGNATORIES TO ICSID MIGHT PROMOTE ITS WIDER USE, SUCH AS BY INCORPORATING APPROPRIATE PROVISIONS IN INVESTMENT PROTECTION AGREEMENTS, INVESTMENT AGREEMENTS INSURED BY NATIONAL INVESTMENT GUARANTEE AUTHORITIES, LIMITED OFFICIAL USE

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ETC. CIME DISCUSSION OF THE HANDLING OF DISPUTE SETTLEMENT ISSUES IN THE UN TNC CODE EXERCISE WOULD BE HELPFUL. WE DO NOT SEE THE VALUE OF A SEPARATE OECD DISPUTE SETTLEMENT MECHANISM. SUCH A MOVE COULD IMPLY THAT ICSID IS NOT TO BE RELIED UPON. FURTHER, FEW DISPUTES OCCUR BETWEEN OECD MEMBER COUNTRIES.

6. THE U.S. WOULD FIND AN EXCHANGE OF VIEWS ON BRIBERY MATTERS TO BE HELPFUL, AND WOULD SUGGEST THAT SUCH DISCUSSION BE HELD WITH A VIEW TO ASSISTING THE EFFORTS UNDERWAY IN ECOSOC TO NEGOTIATE AN INTERNATIONAL AGREEMENT TO DEAL WITH THIS DIFFICULT PROBLEM.

7. WE DO NOT SEE A FURTHER NEED FOR THE CIME TO WORK ON THE QUESTION OF DEFINING MNES AT THIS TIME. HOWEVER, GENERAL DISCUSSIONS OF PROBLEMS RAISED BY EFFORTS TO ARRIVE AT A WORKING DEFINITION OF AN MNE MIGHT ASSIST OECD MEMBERS IN ADDRESSING THE ISSUE AS AND WHEN IT IS RAISED IN THE UN CODE NEGOTIATION.

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8. REGARDING INTERNATIONAL LAW, AS NOTED BY THE SECRETARIAT, A PROPOSED OECD CONVENTION WAS DEVELOPED IN 1967 BUT NEVER RATIFIED. MEMBER COUNTRIES ARE FREE, OF COURSE TO CONSIDER THIS DRAFT CONVENTION AS A STATEMENT REGARDING GOVERNMENT'S DUTIES VIS-A-VIS FOREIGN INVESTMENT. HOWEVER, NO MAJOR PROBLEMS EXIST AT THIS TIME BETWEEN OECD MEMBERS

WHICH SUCH A CONVENTION WOULD ADDRESS. TO OUR KNOWLEDGE, NO MEMBER COUNTRY HAS REQUESTED FURTHER WORK ON AN INTERNATIONAL AGREEMENT SUCH AS THAT PROPOSED BY THE SECRETARIAT. WE DO NOT BELIEVE, THEREFORE, THAT IT WOULD BE A USEFUL EXPENDITURE OF EFFORT TO DEVELOP AN OECD INVESTMENT CODE OR CONVENTION, AS PROPOSED BY THE SECRETARIAT UNDER THE RUBRIC "INTERNATIONAL LAW". HOWEVER, IF OTHER DELEGATIONS SUPPORT CIME DISCUSSION OF THE PROPOSAL, US WILL AGREE TO PARTICIPATE.
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9. SOME PORTIONS OF THE SECRETARIAT DOCUMENT RAISE PROBLEMS FOR THE U.S. FOR EXAMPLE, THE TAX HAVEN QUESTION IS UNDER ACTIVE CONSIDERATION BY WORKING PARTY 6 OF THE FISCAL AFFAIRS COMMITTEE. WE DO NOT SEE THE NEED FOR THE CIME TO PROVIDE FURTHER STIMULUS TO THAT EXERCISE NOW. WE ALSO WOULD OPPOSE OPENING UP THE SENSITIVE ISSUE RAISED IN THE EMPLOYMENT AND INDUSTRIAL RELATIONS SECTION. THIS POINT WAS DISCUSSED DURING NEGOTIATIONS ON THE DECLARATION AND IT WAS AGREED NOT TO INCLUDE LANGUAGE REFERRING TO INTERNATIONAL COLLECTIVE BARGAINING. WE DO NOT UNDERSTAND THE INTENT BEHIND OR THE SIGNIFICANCE OF THE SECTIONS ON INFORMATION DISCLOSURE AND WILL WANT SOME CLARIFICATION AT THE NEXT CIME. THIS WAS THE MOST DIFFICULT AND SENSITIVE AREA IN THE NEGOTIATIONS ON THE GUIDELINES AND SHOULD BE HANDLED BY THE CIME WITH CAUTION AND RESTRAINT. FINALLY, WE FIND THE REFERENCE TO THE CONCLUSIONS OF THE WORKING PARTY ON SHORT TERM CAPITAL MOVEMENTS OBJECTIONABLE. SUCH JUDGMENTS REGARDING THE WORK OF OTHER OECD COMMITTEES DO NOT BELONG IN A SECRETARIAT DOCUMENT OF THIS KIND.

10. FOR BONN: PLEASE PASS SUBSTANCE OF ABOVE TO ABRAMOWSKI CHAIRMAN OF OECD INVESTMENT COMMITTEE.
VANCE

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